

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SHERRY L. WIATT,)	
)	
Plaintiff,)	Civil Action No.: 7:04cv00461
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
DOUGLAS W. MARRS, and THE)	By: Samuel G. Wilson
MONTGOMERY COUNTY SHERIFF’S)	United States District Judge
OFFICE)	
)	
Defendants.)	

Plaintiff Sherry L. Wiatt, a former Montgomery County sheriff’s deputy, filed this Title VII action alleging gender discrimination and retaliatory discharge. Wiatt has named as defendants Douglas W. Marrs, the former Sheriff of Montgomery County, as well as “the Montgomery County Sheriff’s Office.” The matter is before the court on a motion to dismiss by the current sheriff of Montgomery County, who claims that Wiatt has failed to state a viable claim because there is no such entity as “the Montgomery County Sheriff’s Office.”¹ Wiatt has filed a motion for leave to amend her complaint to substitute Sheriff J.T. Whitt, the current sheriff of Montgomery County, in his official capacity, as a defendant. The court construes Wiatt’s suit, even without amendment, as one against the Sheriff of Montgomery County in his official capacity and finds the current sheriff subject to suit under Title VII. Therefore, the court denies the motion to dismiss and grants Wiatt leave to amend her complaint.

I.

¹Marrs has not filed a motion to dismiss the claims against him; therefore, the court does not address at this time the question of whether he is a proper defendant under Title VII.

Wiatt served as a deputy sheriff for Montgomery County under Sheriff Marrs. Wiatt alleges that on July 23, 2000, she informed Marrs that she was pregnant and that in response Marrs reassigned Wiatt from “road duty” to a dispatcher position. Wiatt claims that she requested to be returned to “road duty,” and Marrs replied that she was “hormonal” and “would be okay after the baby was born.” Wiatt then filed complaints with the Equal Employment Opportunity Commission (“EEOC”) and the Virginia Council in Human Rights (“VCHR”), alleging gender discrimination. Marrs returned Wiatt to “road duty,” a decision he contends had nothing to do with Wiatt’s complaints. Both the EEOC and VCHR issued “right to sue” letters but Wiatt did not file suit. On December 12, 2002, Marrs terminated Wiatt’s employment. Wiatt claims that Marrs terminated her in retaliation for her earlier protected activities. She filed a second claim with the EEOC and on May 28, 2004, that agency found that Marrs discharged Wiatt as a result of her protected activity. The defendants refused to conciliate and Wiatt filed the current action.

II.

A county sheriff, in his official capacity, is an “employer” within the meaning of Title VII, 42 U.S.C. § 2000e et seq. The Virginia Constitution, Art. VII § 4, provides that sheriffs in Virginia are constitutional officers serving independently of both municipal and state governments. While a sheriff’s duties are defined and regulated by state statute, Va. Code Ann. § 15.1-48 gives the sheriff sole and exclusive discretion to hire and fire deputies. The sheriff of Montgomery County in his official capacity, assuming he has more than fifteen employees, is therefore subject to suit as an “employer” within the meaning of Title VII. See, e.g., Eford v. Riley, 342 F. Supp. 2d 413, 420 (M.D.N.C. 2004) (noting “numerous Title VII cases within [the Fourth Circuit] in which an individual defendant has been sued as

the ‘Sheriff of [a named] County’ and where the courts have consistently assumed that the office of the sheriff was properly named as the plaintiff’s employer within the meaning of Title VII.’)

The court construes Wiatt’s use of the term “Montgomery County Sheriff’s Office” to refer to the Sheriff of Montgomery County in his official capacity, an entity which is amenable to suit under Title VII.

III.

For the reasons stated, the court denies defendant’s motion to dismiss and grants plaintiff’s motion to amend her complaint..

ENTER: This ____ day of February, 2005.

UNITED STATES DISTRICT JUDGE

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